Yeow Soh Hwa v Low Lim Chew Poh

HIGH COURT (MELAKA) — CIVIL APPEAL NO 1–11–3 OF 2003
LOW HOP BING J
1 MARCH 2004

Landlord and Tenant — Tenancy coupled with equity — Determination — Claim by landlord of vacant possession — Tenant not in occupation of rented premises — Whether equity would come in aid of tenant

In this case, the defendant was a ground tenant of a land, originally owned by one Khoo Swee Neo at RM70 per month. The defendant then rented out the whole premises at RM450 per month to one Lim Tai Kee in 1980. Subsequently, the owner of the land transferred the land to her daughter, Yau Lai Niu, who then sold it to the plaintiff, the registered owner. On 10 and 27 October 2001, the plaintiff sent solicitors' letters to the defendant terminating the tenancy and demanding vacant possession of the premises. The learned counsel for the defendant submitted that on the facts the defendant had a tenancy coupled with equity in respect of the land, as a result of which the plaintiff's notice to quit dated 27 October 2001 was insufficient to terminate the tenancy unless the defendant's equity had been satisfied. The learned counsel for the plaintiff on the other hand, contended that since the defendant was not in occupation of the premises the defendant could not claim a tenancy coupled with equity. The contention for the plaintiff was upheld by the learned magistrate and the defendant was ordered to deliver vacant possession of the premises to the plaintiff within one month from the date of the order. The defendant appealed. The issue was, whether, on the facts, the defendant was entitled to claim a tenancy coupled with equity.

Held, dismissing the appeal with costs:

The defendant who is coming to equity must do equity. The defendant in this case did not measure up to the maxim of equity. The defendant actually abused and claimed the aid of equity for his own profit at the expense and to the detriment of the plaintiff, since the defendant and his family members had not occupied the premises since 1980 but had rented the premises at RM450 per month which was six and a half times the ground rent of RM70 per month. Thus, the court was of the view that the defendant could not now claim that he was a tenant coupled with equity. The decision of the learned magistrate was correct and hereby affirmed (see paras 22–23).

[**Bahasa Malaysia summary**

Defendan merupakan penyewa tanah bagi sewa tanah bulanan sebanyak RM70. Pemilik asal tanah tersebut adalah seorang yang bernama Khoo Swee Neo. Pada 1980, defendan telah menyewa keseluruhan premis atas tanah tersebut kepada Lim Tai Kee. Tanah tersebut kemudiannya telah dipindahkan kepada Yau Lai Niu, anak kepada pemilik asal tanah. Akhirnya tanah tersebut telah dibeli oleh plaintif yang menjadi pemilik berdaftar. Pada 10 dan 27 Oktober 2001, suatu notis peguamcara plaintif telah dihantarkan kepada defendan

untuk menamatkan penyewaan tanah tersebut serta meminta milikan kosong. Peguambela untuk defendant menghujah bahawa defendan mempunyai satu penyewaan bersama dengan ekuiti dan oleh kerana itu notis keluar yang bertarikh 27 Oktober 2001 adalah tidak mencukupi untuk menamatkan penyewaan premis tersebut. Peguamcara untuk plaintif berpendapat bahawa defendan tidak boleh meminta penyewaan bersama dengan equiti kerana defendan tidak menetap di premis atas tanah tersebut. Mahkamah majistret telah mengesahkan penghujahan plaintif dan memerintah defendan untuk mengosongkan premis kepada plaintif dalam tempoh satu bulan dari tarikh perintah. Defendan merayu. Isu atas fakta adalah sama ada, defendan berhak untuk meminta penyewaan bersama dengan equiti.

Diputuskan, menolak rayuan dengan kos:

(1) Defendan tidak mematuhi maxim ekuiti kerana beliau telah menyalahgunakannya dengan menyewakan premis bagi sewa bulanan sebanyak RM450, iaitu enam setengah kali lebih dari sewa bulanan asal sebanyak RM70. Lagipun, defendan dan keluarganya tidak menetap di premis tersebut. Oleh itu, mahkamah berpendapat bahawa defendan tidak boleh meminta penyewaan bersama dengan equiti atas tanah tersebut. Keputusan majistret adalah betul dan sah (lihat perenggan 22–23).]

Notes

For cases on tenancy coupled with equity generally, see 9 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 1381–1395.

Cases referred to

C Paul D'Cruz v Chow Tai Yow & Sons Sdn Bhd [1999] 1 MLJ 51 (folld)
Devi v Francis [1969] 2 MLJ 169 (refd)
Inwards v Baker [1965] 1 All ER 446 (refd)
Laksamana Realty Sdn Bhd v Yeo Tin Sang [1998] 4 MLJ 48 (refd)
Mok Deng Chee v Yap See Hoi & Ors [1981] 2 MLJ 321 (refd)
MPRL Karuppan Chetty v Suah Thian (1916) 1 FMSLR 300 (refd)
Plimmer v The Mayor, Councillors, and Citizens of The City of Wellington (1884) 9 AC 699 (refd)
Ramsden v Dyson (1866) LR 1 HL 129 (refd)
Tan Swee Hoe Co Ltd v Ali Hussain Bros [1980] 2 MLJ 16 (refd)
Tan Swee Hoe Co Ltd v Ali Hussain Bros [1980] 1 MLJ 89 (refd)
Wong Yon Lin v Liew Tham Soon & Ors [1980] 2 MLJ 99 (refd)
Yong Tong Hong v Siew Soon Wah & Ors [1971] 2 MLJ 105 (refd)

Legislation referred to

National Land Code s221(3)(a)

AB Ng (AB Ng & Assoc) for the plaintiff.
Yau Jiok Hua (Yau Jiok Hua & Co) for the defendant.

Low Hop Bing J:

APPEAL

[1] This is an appeal by the appellant-defendant ('the defendant') against the decision of the learned magistrate Alor Gajah who on 14 February 2003 ordered the defendant and all those claiming through or under the defendant to deliver vacant possession of the premises, ie a double-storey shophouse at No 4570, Jalan Besar Alor Gajah, Pekan Alor Gajah, 78000 Melaka ('the premises') erected in 1963 by the defendant on the land held under Registration No 2240, Lot No141, Section 1, Alor Gajah town, Alor Gajah district, State of Melaka measuring 1600 sq ft ('the land') to the plaintiff within one month from the date of the order.

FINDING OF FACTS

[2] The defendant is the ground tenant of the land, originally from the previous owner one Khoo Swee Neo at RM15 per month, and then at RM70 per month. The defendant occupied the premises until 1978 when he rented out some rooms.

[3] Finally in 1980, the defendant rented the whole premises at RM450 per month to one Lim Tai Kee who has been using it as a restaurant since then.

[4] Subsequently, Khoo Swee Neo transferred the land to her daughter Yau Lai Niu who sold it to the plaintiff on 12 November 1996 at RM50,000. The plaintiff became the registered owner on 1 April 1997.

[5] On 10 and 27 October 2001, the plaintiff sent solicitors' letters to the defendant terminating the tenancy and demanding vacant possession of the premises with effect from 1 December 2001, but the defendant failed to deliver vacant possession.

SUBMISSION FOR DEFENDANT

[6] Mr Yau Jiok Hua, learned counsel for the defendant, submitted that on the facts, the defendant had a tenancy coupled with equity in respect of the land, as a result of which the plaintiffs' notice to quit dated 27 October 2001 was not sufficient to terminate the tenancy unless the defendant's equity had been satisfied, relying on *Laksamana Realty Sdn Bhd v Yeo Tin Sang* [1998] 4 MLJ 48; *Mok Deng Chee v Yap See Hoi & Ors* [1981] 2 MLJ 321; *Yong Tong Hong v Siew Soon Wah & Ors* [1971] 2 MLJ 105; *Tan Swee Hoe Co Ltd v Ali Hussain Bros* [1980] 1 MLJ 89; *Inwards v Baker* [1965] 1 All ER 446.

[7] He contended that a tenancy coupled with equity for part of the land expires only after 30 years, but added that the tenancy here is for the whole land, and so the equity is of 99 years duration, on the basis of s 221(3)(a) of the National Land Code, which entitles the defendant to remain thereon until 2062.

[8] The submission for the defendant was not upheld by the learned magistrate.

CONTENTION FOR PLAINTIFF

[9] Mr AB Ng, learned counsel for the plaintiff, contended, inter alia, that the notice to quit given by the plaintiff to the defendant is sufficient to terminate the monthly tenancy, and that, on the authority of *C Paul D'Cruz v Chow Tai Yow & Sons Sdn Bhd* [1999J 1 MLJ 51, since the defendant was not in occupation of the premises the defendant could not claim a tenancy coupled with equity.

DECISION ON APPEAL

Issue for determination

[10] The issue for determination by the learned magistrate and now on appeal before me is whether, on the facts as alluded to above, the defendant is entitled to claim a tenancy coupled with equity.

Consideration of authorities cited for defendant

[11] Before giving my definitive answer to the above issue for determination and out of deference to the diligence of learned counsel for the defendant, I think it is appropriate to examine and analyse the authorities cited for the defendant.

[12] In *Laksamana Realty*, the plaintiff was the registered owner of land on which the defendant was the ground tenant of a building which the defendant owned since 1965, at a monthly rental paid to the previous owner and subsequently to the plaintiff. On 20 July 1994, the plaintiff sent a notice to quit to the defendant who continued to remain thereon as a result of which the plaintiff commenced an action against the defendant for vacant possession. The sessions court found that at the time of purchasing the land, the plaintiff was aware that the defendant was the owner of the building and held that there was a tenancy coupled with equity, for which the defendant was awarded RM40,000 as compensation. On appeal by the plaintiff, Suriyadi J held, inter alia, that a tenancy coupled with equity did exist in this case but it was limited to 30 years, and that although the notice to quit was premature, the defendant had continued occupying the premises, for a period longer than 30 years, he was not entitled to compensation, as his equity has since been satisfied.

[13] In *Mok Deng Chee*, the respondents were the owners of a piece of land on which a house had been built by one Hong Kong who was a ground tenant at the ground rent of RM1 per month. The house was sold to the appellant's father. After the death of his father, the appellant became the owner thereof. He continued to pay the ground rent of RM1 which was later raised to RM2.50 per month. In 1975, the appellant without the respondent's consent demolished the old house and started to build a completely new house. Differences arose between the parties and a meeting was held to resolve the differences. It was agreed that the appellant should pay tea money of RM1,500 and that a written agreement relating to the tenancy be signed. The appellant did not agree to sign the agreement, whereupon the respondent served a notice to quit and

A then sued for vacant possession. The learned magistrate gave judgment in favour of the appellant. On appeal, the learned judge reversed the finding of the learned magistrate. On further appeal, the Federal Court restored the finding of the learned magistrate that the appellant's tenancy was coupled with equity.

B **[14]** Salleh Abas FJ (later LP) in delivering judgment of the Federal Court traced the law on tenancy coupled with equity which is also known as equitable estoppel or irrevocable licence. The speech of Lord Kingsdown in *Ramsden v Dyson* (1866) LR 1 HL 129 was accepted and applied by the Privy Council in *Plimmer v The Mayor, Councillors, and Citizens of The City of Wellington* (1884) 9 AC 699 and judicially refined and defined by Lord Denning MR
C in *Inwards v Baker*, at p 448 in the following words:

> … if the owner of land requires another or indeed allows another, to expend money on the land under the expectation created or encouraged by the landlord that he will be able to remain there, that raises an equity in the licence such as to entitle him to stay. He has a licence coupled with equity ... that the equity arising from the
D expectation of land does not fail … .

[15] The Federal Court held that this principle was recognised as long ago as 1916 in the case of *MPRL Karuppan Chetty v Suah Thian* (1916) 1 FMSLR 300 and applied by Chang Min Tat J (later FJ) in *Devi v Francis* [1969] 2 MLJ 169, which became settled law pursuant to a judgment of the Federal
E Court in *Yong Tong Hong v Siew Soon Wah & Ors* [1971] 2 MLJ 105, which was confirmed by the Privy Council sub nom [1973] 1 MLJ 133. This principle was also subsequently applied by Syed Othman J (later FJ) in *Tan Swee Hoe Co Ltd v Ali Hussain Bros* [1980] 1 MLJ 89 (HC) and confirmed by the Federal Court sub nom [1980] 2 MLJ 16 (FC). Abdoolcader J (later FJ) also applied this principle in *Wong Yon Lin v Liew Tham Soon & Ors* [1980] 2 MLJ 99.

F **[16]** The Federal Court through the judgment of Ong CJ (Malaya) made it clear in *Yong Tong Hong*, that the equity was to protect the tenant's occupation of the land.

[17] In *Tan Swee Hoe Co Ltd*, Syed Othman J held, inter alia, that the equity created would entitle the tenant to occupy the premises, for 99 years under
G s 221(3)(a) of the National Land Code.

[18] In *Inwards v Baker*, the English Court of Appeal also expressed a similar sentiment.

[19] The above analysis of the authorities cited for the defendant shows a common denominator, ie a tenancy coupled with equity would only apply to
H entitle the tenant to remain in occupation of the premises but not otherwise, eg where the tenant is no longer remaining in occupation of the premises.

[20] In this regard, I am mindful of the judgment of Abdul Malik Ishak J in *C Paul D'Cruz*, where the principle of tenancy coupled with equity was raised in aid of a tenant, when neither the tenant nor his family members
I occupied the premises but had in fact rented out the premises to a third party at a rental, at a profit exceeding 10% of the rental charged by the registered proprietor. The learned judge, after referring to *Ramsden v Dyson* and *Inwards*

v Baker questioned how a non-occupying tenant of the premises could claim that he had a tenancy coupled with equity. The learned judge hence held that there was no prima facie defence to the landlord's claim for vacant possession.

[21] I am in entire agreement with and hereby apply the dictum of the learned judge. The learned magistrate also followed that decision.

[22] Reverting to the facts in the instant appeal, I am of the view that the defendant who is coming to equity must do equity. The question is whether he is measuring up to this maxim of equity. The answer is obviously in the negative. He is actually abusing and claiming the aid of equity for his own profit at the expense and to the detriment of the plaintiff, since the defendant and his family members have not been occupying the premises since 1980 but has rented the premises at RM450 per month which is six and a half times the ground rent of RM70 per month. In my view, he cannot now claim that he is a tenant coupled with equity.

CONCLUSION

[23] Having regard to the foregoing grounds, I am of the view that the decision of the learned magistrate is correct and is hereby affirmed. Accordingly, the appeal herein is dismissed with costs.

Appeal dismissed with costs.

Reported by Annette John